

# Community Appearance and Design Controls after *Lanvale*

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Here are some examples of uses of land that may be subject to zoning regulations concerning their appearance









**FAMILY  
DOLLAR**

**UHAUL**



**SELF-STORAGE**

WE  
BUY AND SELL  
GOLD  
AND  
DIAMONDS

**DIAMONDS** 

COMPLETE  
JEWELRY  
REPAIR

DRESS BLUES STATION  
"INSTANT FIT"  
BUY • SELL • RENT

**100**

**BURGER  
KING**

**WILLARD'S**  
Burgers • Fries • Soft Drinks • More  
Than 100 Items • Open 24 Hours  
Call for Delivery • 1-800-555-1234

**McDonald's**  
Burgers • Fries • Soft Drinks • More  
Than 100 Items • Open 24 Hours  
Call for Delivery • 1-800-555-1234

**WILLARD'S**  
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# The Lanvale Properties Case

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# Lanvale Properties, LLC v. County of Cabarrus

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- ❑ N.C. Supreme Court ruled county “adequate public facilities ordinance (APFO)” invalid as it applied to public schools
  - ❑ If school capacity inadequate, developers expected to “mitigate” by postponing or scaling down development or paying a “voluntary mitigation fee(VMF)”
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# Lanvale Properties, LLC v. County of Cabarrus

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- ❑ Court held that zoning enabling statutes failed to authorize APF programs with these mitigation measures
  - ❑ G.S. 153A-341 (county zoning purposes) includes facilitating “the efficient and adequate provision of . . . schools . . .”
  - ❑ But G.S. 153A-340 (listing means or tools for achieving zoning purposes) furnished no express authorization for VMFs
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# Lanvale Properties, LLC v. County of Cabarrus

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- G.S.153A-4 declares that county statutes
    - “shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power.”
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# Lanvale Properties, LLC v. County of Cabarrus

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- Court holds that G.S. 153A-4 is a rule of statutory construction rather than a general directive to give the zoning statutes broadest possible construction
  - G.S.153A-4 applies only when
    - (1) statutes to be construed are ambiguous, OR
    - (2) its application is necessary to give effect to “any powers that are reasonably expedient to (a county’s) exercise of the (zoning) power”
-

# Lanvale Properties, LLC v. County of Cabarrus

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- ❑ County zoning statutes were not ambiguous; no broad construction; no express authority for APF program
  - ❑ Additionally, APF provisions were not “reasonably expedient” to the zoning power, apparently because either
    - Mitigation fees unreasonably high, OR
    - Fees were unsuitable means for achieving the allowable zoning purpose of facilitating school construction
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# Implications for Community Appearance and Design Controls

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# Statutes Affecting Municipal Zoning Power

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- G.S. 160A-4 (“Broad Construction”) declares that:
    - Municipal statutes “shall be broadly construed” AND
    - Grants of power “shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to carry them into execution and effect.”
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# Statutes Affecting Municipal Zoning Power

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- G.S. 160A-383 (“Purposes in View”) declares that zoning regulations:
    - “(S)hall be made with reasonable consdieration, . . . as to the character of the district and its peculiar suitability for particular uses , and with a view to conserving the value of buildngs and encouraging the most appropriate use of land throughout such city.”
  - No mention in G.S. 160A-383 of “appearance,” “aesthetics,” “architectural style,” or “design”
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# Statutes Affecting Municipal Zoning Power

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- ❑ G.S. 160A-381(a) (“Grant of power”) declares in part that zoning regulations:
    - “(M)ay regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and open spaces, the density of population, the location and use of buildings, structures, and land. . .”
  - ❑ No mention in G.S. 160A-381(a) of “appearance,” “aesthetics,” “architectural style,” or “design”
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# Statutes Affecting Municipal Zoning Power

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- ❑ Language of G.S. 160A-383 and 160A-381(a) is unambiguous and does not expressly authorize appearance or design controls, so broad construction mandate does not apply
  - ❑ Key question, then, is whether particular ordinance or set of regulations are a reasonably necessary or expedient means of “conserving the value of buildings and encouraging the appropriate use of land . . . .”
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How a court might rule if a community appearance or design control ordinance were challenged might depend on the following considerations:



(1)

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What is the effect of presumption of validity that applies to zoning ordinances?

(2)

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Is there North Carolina legal precedent regarding appearance standards?

(3)

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Is there specific enabling legislation that specifically authorizes the use of design and appearance controls in particular circumstances?



(4)

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Is there local legislation authorizing appearance/design controls for buildings other than for historic properties?

(5)

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How pervasive are appearance and design controls in this state?

(6)

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To what extent is the regulatory program innovative and different?



(7)

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Does the ordinance establish a design review board or similar agency to administer the regulations?

(8)

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Are the appearance standards and design controls concrete and specific?

(9)

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Are the regulations in question based on the context in which affected structures are located?



(10)

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Does the regulatory program intrude on private property rights in a substantial or unexpected way?

# Community Appearance and Design Controls

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- ❑ Legal validity as applied non-historic buildings is uncertain
  - ❑ *Lanvale* refocuses attention on scope of the zoning power, but does not change the nature of the design controls debate in a major way
  - ❑ Legal reception will depend on nature of regulations involved and whether they complement traditional zoning tools and objectives
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Thanks for your attention.

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